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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6282 OF 2005

Mr. Yogesh Gopal Mahamulkar ... Petitioner

Vs.

Sou. Radhika Yogesh Mahamulkar ... Respondent

Mr. Dilip Bodake for the petitioner.

None for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND SEPTEMBER, 2005.

P.C.:-

1. The petitioner is the respondent in Hindu Marriage Petition No.104 of 2004 and the respondent in this petition is the petitioner therein. The petitioner and respondent were married on 6/7/2003. In Hindu Marriage Petition No.104 of 2004, the respondent is seeking a declaration that the marriage between her and the petitioner be declared as illegal and void because prior to her marriage with the petitioner, the petitioner was already married to one Sangita Shinde on 13/6/2003 and this fact was suppressed from her.

2. In this petition, the respondents filed an application for interim alimony under section 24 of the Hindu Marriage Act. The trial court allowed the application and directed the petitioner to pay an amount of Rs.1000/- per month to the respondent. This order is

challenged before me.

3. I have heard Mr. Bodake, the learned counsel appearing for the petitioner. He contended that the trial court erred in awarding maintenance to the respondent because it is the respondent's case that the petitioner was earlier married to one Sangita Shinde and, therefore, her marriage with him is bad in law. If that is so, then the respondent cannot be included in the definition of "wife" as contained in section 25 of the Hindu Marriage Act and, therefore, she is not entitled to maintenance. In support of his submission, he relied on the judgment of this court in **Bhausaheb @ Sandu s/o. Raghuji Magar v. Smt. Leelabai w/o. Bhausaheb Magar, 2004(1) ALL MR 278**, where the Full Bench of this court has held that when the status of a woman as "wife" is not recognized by provisions of the Hindu Marriage Act, which confers the right for permanent alimony, she cannot be granted relief of maintenance.

4. In my opinion, the impugned order cannot be interfered with. Though it is the contention of the respondent that the petitioner was married to one Sangita Shinde prior to her marriage with him, in the written statement or replies to her application, the petitioner has not categorically denied this fact. Therefore, whether the petitioner was really married to Sangita Shinde or not is yet to be decided and till the trial court finally decides this, it cannot be said that the

marriage between the petitioner and the respondent is illegal because the petitioner was legally married earlier. At this stage, therefore, the respondent cannot be denied maintenance. The petitioner cannot draw any support from the Full Bench decision of this court at this stage. In the circumstances, the petition is rejected. However, all contentions of the petitioner are kept open to be decided at the final hearing of Hindu Marriage Petition No.104 of 2004. The learned counsel for the petitioner submits that the said Hindu marriage petition be expedited. In the absence of the respondent, no such order can be passed. However, the petitioner is at liberty to make an application for expeditious disposal of the said Hindu marriage petition before the trial court and the trial court may consider it sympathetically. Petition is rejected.

(SMT. RANJANA DESAI, J.)